HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, Colorado 80527-2400

PATENT APPLICATION

ATTORNEY DOCKET NO. 200313242-1

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Sumit ROY et al.

Confirmation No.: 3556

Application No.: 10/698,671

Examiner: Julian Chang

Filing Date: 10/30/2003

Group Art Unit: 2452

Title: SYSTEMS AND METHODS FOR SELECTING A PROVIDER TO SERVICE CONTENT REQUESTED BY A CLIENT DEVICE

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on 04/17/2009.

☑ The fee for filing this Appeal Brief is $540.00 (37 CFR 41.20).

☐ No Additional Fee Required.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐ (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

☐ 1st Month $130	☐ 2nd Month $490	☐ 3rd Month $1110	☐ 4th Month $1730

☐ The extension fee has already been filed in this application.

☑ (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of $540. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

Respectfully submitted,

Sumit ROY et al.

By /John P. Wagner, Jr./

John P. Wagner, Jr.

Attorney/Agent for Applicant(s)

Reg No. : 35,398

Date : 06/17/2009

Telephone : 408-377-0500

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant:	ROY et al.	Patent Application	
Application No.:	10/698,671	Group Art Unit:	2452
Filed:	October 30, 2003	Examiner:	Chang, Julian

For: SYSTEMS AND METHODS FOR SELECTING A PROVIDER TO SERVICE CONTENT REQUESTED BY A CLIENT DEVICE

APPEAL BRIEF

Table of Contents

I. Real Party in Interest

The assignee of the present invention is Hewlett-Packard Development Company, L.P.

II. Related Appeals and Interferences

There are no related appeals or interferences known to the Appellants.

III. Status of Claims

Claims 1-18 and 26-40 remain pending in the instant application. Claims 19-25 are cancelled. Claims 1-18 and 26-40 are rejected. This Appeal involves Claims 1-18 and 26-40.

IV. Status of Amendments

All proposed amendments have been entered. An amendment subsequent to the Final Office Action mailed February 18, 2009, has not been filed.

V. Summary of Claimed Subject Matter-

As recited in Claim 1, "[a] method of servicing content for delivery to a client device" is described. This embodiment is depicted at least in Figures 1, 2A, 2B and 3. "Figure 3 is a flowchart 300 of a method for servicing and delivering service result content according to one embodiment of the present invention" (page 18, lines 5-6). "In step 302 of Figure 3, during a session with a client device, a portal receives a request from the client device, identifying an item of content" (page 18, lines 22-23). "In step 304 of Figure 3, a type of service to performed on the item of content is identified. The type of service can be identified in the request of step 302" (page 18, lines 27-29). "In step 306 of Figure 3, in one embodiment, an estimate of the amount of resources associated with performing the service is made. ... The estimated resources associated with performing the service can be used to select a service provider" (page 18, lines 33-38). "In step 308 of Figure 3, communication with the client device is transferred from the portal to the selected service provider. In other words, the session is transferred from the portal to the selected service provider" (page 19, lines 23-25).

As recited in Claim 11, "[a] method of managing providers that service content for streaming to a client device" is described. This embodiment is depicted at least in Figures 1, 2A, 2B and 4. "Figure 4 is a flowchart 400 of a method for managing the servicing of content according to one embodiment of the present invention" (page 21, lines 17-18). "System 100 in operation is now more fully described. At the beginning of a session, client device 150 sends message 1 to portal 140. Message 1 identifies a particular item of content (e.g., the name of a movie)" (page 12, lines 12-14). "Also, in one embodiment, message 1 includes information sufficient for identifying a type of service that should be performed on the item of content before the service result is delivered to client device 150" (page 12, lines

16-18). "In step 406 of Figure 4, in one embodiment, a record is maintained of the resources available to perform the service, as previously described herein. More specifically, a record can be maintained that identifies each of the service providers known to service location manager 120 (Figures 1, 2A and 2B). The record can also identify the available resources associated with each of those service providers, or the amount of each service provider's resources already allocated to other sessions in progress" (page 21, line 36, through page 22, line 3). "In step 408 of Figure 4, in one embodiment, the information in the aforementioned record is used to select a service provider" (page 22, lines 7-8). "In other words, the session initiated by client device 150 is automatically transferred from portal 140 to service provider 130" (page 15, lines 2-4). "In response to message 6, content source 110 sends the item of content to service provider 130 for servicing (illustrated by arrow 7 in Figure 1)" (page 15, lines 26-28). "The service result content is then sent by service provider 130 to client device 150 (illustrated by arrow 8 in Figure 1)" (page 16, lines 6-7).

As recited in Claim 26, "[a] system for streaming content to a client device" is described. This embodiment is depicted at least in Figures 1, 2A and 2B. "In the present embodiment, system 100 includes a service location manager 120, a plurality of service providers exemplified by a service provider 130 and service provider 132, and a portal 140" (page 7, lines 27-29). "At the beginning of a session, client device 150 sends message 1 to portal 140. Message 1 identifies a particular item of content (e.g., the name of a movie)." (page 12, lines 12-14). "After receiving message 1, portal 140 sends message 2 to service location manager 120. In one embodiment, message 2 includes information sufficient for identifying a type of service that should be performed on the item of content before the service result is delivered to client device 150" (page 12, line 37, through page 13, line 1). "[M]essage 2 can also identify the item of content and/or the content source" (page 13, lines

14-15). "Service location manager 120 functions to select a service provider (e.g., service provider 130 or 132) that can perform the type of service that may need to be performed on an item of content before the service result is provided to the client device 150. Service providers 130 and 132, and any other available service providers, are known to service location manager 120. In one embodiment, service location manager 120 maintains a record or listing of the service providers known to service location manager 120" (page 10, lines 17-26). "In yet another embodiment, when service location manager 120 receives a request for an item of content that entails performing a service on the item of content, the service location manager 120 makes a prediction or estimate of the resources needed to perform that service" (page 11, lines 5-8). "In response to message 6, content source 110 sends the item of content to service provider 130 for servicing (illustrated by arrow 7 in Figure 1)" (page 15, lines 26-28). "The service result content is then sent by service provider 130 to client device 150 (illustrated by arrow 8 in Figure 1)" (page 16, lines 6-7).

As recited in Claim 33, "[a] computer-usable medium having computer-readable program code embodied therein for causing a computer system to perform a method for servicing content for delivery to a client device" is described. This embodiment is depicted at least in Figures 1, 2A, 2B and 3. "Figure 3 is a flowchart 300 of a method for servicing and delivering service result content according to one embodiment of the present invention" (page 18, lines 5-6). "All of, or a portion of, the methods described by flowchart 300 can be implemented using computer-readable and computer-executable instructions which reside, for example, in computer-usable media of a computer system or like device" (page 18, lines 14-17). "In step 302 of Figure 3, during a session with a client device, a portal receives a request from the client device, identifying an item of content" (page 18, lines 22-23). "In step 304 of Figure 3, a type of service to performed on the item of content is identified. The

type of service can be identified in the request of step 302" (page 18, lines 27-29). "In step 306 of Figure 3, in one embodiment, an estimate of the amount of resources associated with performing the service is made. ... The estimated resources associated with performing the service can be used to select a service provider" (page 18, lines 33-38). "In step 308 of Figure 3, communication with the client device is transferred from the portal to the selected service provider. In other words, the session is transferred from the portal to the selected service provider" (page 19, lines 23-25).

As recited in Claim 37, "[a] computer-usable medium having computer-readable program code embodied therein for causing a computer system to perform a method for servicing content for streaming to a client device" is described. This embodiment is depicted at least in Figures 1, 2A, 2B and 4. "Figure 4 is a flowchart 400 of a method for managing the servicing of content according to one embodiment of the present invention" (page 21, lines 17-18). "All of, or a portion of, the methods described by flowchart 400 can be implemented using computer-readable and computer-executable instructions which reside, for example, in computer-usable media of a computer system or like device" (page 21, lines 25-28). "System 100 in operation is now more fully described. At the beginning of a session, client device 150 sends message 1 to portal 140. Message 1 identifies a particular item of content (e.g., the name of a movie)" (page 12, lines 12-14). "Also, in one embodiment, message 1 includes information sufficient for identifying a type of service that should be performed on the item of content before the service result is delivered to client device 150" (page 12, lines 16-18). "In step 406 of Figure 4, in one embodiment, a record is maintained of the resources available to perform the service, as previously described herein. More specifically, a record can be maintained that identifies each of the service providers known to service location manager 120 (Figures 1, 2A and 2B). The record can also identify the

available resources associated with each of those service providers, or the amount of each service provider's resources already allocated to other sessions in progress" (page 21, line 36, through page 22, line 3). "In step 408 of Figure 4, in one embodiment, the information in the aforementioned record is used to select a service provider" (page 22, lines 7-8). "In other words, the session initiated by client device 150 is automatically transferred from portal 140 to service provider 130" (page 15, lines 2-4). "In response to message 6, content source 110 sends the item of content to service provider 130 for servicing (illustrated by arrow 7 in Figure 1)" (page 15, lines 26-28). "The service result content is then sent by service provider 130 to client device 150 (illustrated by arrow 8 in Figure 1)" (page 16, lines 6-7).

VI. Grounds of Rejection to Be Reviewed on Appeal

1. Claims 1-3, 6, 8, 10-12, 14, 16, 18, 33, 34 and 36-39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0158913 by Agnoli et al., hereinafter referred to as "Agnoli," in view of U.S. Patent No. 7,171,206 by Wu.

2. Claims 4, 5, 15 and 35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view of Wu, further in view of U.S. Patent No. 6,421,733 by Tso et al., hereinafter referred to as "Tso."

3. Claims 7, 17 and 40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view of Wu, further in view of U.S. Patent Application Publication No. 2003/0046396 by Richter et al., hereinafter referred to as "Richter."

4. Claims 9 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view of Wu, further in view of U.S. Patent No. 6,407,680 by Lai et al., hereinafter referred to as "Lai."

5. Claims 26-30 and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view of Wu, further in view of Tso.

6. Claim 31 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view of Wu, further in view of Tso, yet further in view of Richter.

VII. Argument

1. Whether Claims 1-3, 6, 8, 10-12, 14, 16, 18, 33, 34 and 36-39 are unpatentable under 35 U.S.C. §103(a) over Agnoli in view of Wu.

The Final Office Action mailed February 18, 2009, hereinafter referred to as the "instant Office Action," asserts that Claims 1-3, 6, 8, 10-12, 14, 16, 18, 33, 34 and 36-39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view of Wu. Appellants have reviewed Agnoli and Wu and respectfully submit that the embodiments as recited in Claims 1-3, 6, 8, 10-12, 14, 16, 18, 33, 34 and 36-39 are patentable over Agnoli in view of Wu for at least the following rationale.

"As reiterated by the Supreme Court in KSR, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries" including "[a]scertaining the differences between the claimed invention and the prior art" (MPEP 2141(II)). "In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious" (emphasis in original; MPEP 2141.02(I)). Appellants note that "[t]he prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art" (emphasis added; MPEP 2141(III)).

Appellants respectfully submit that the rejection of the Claims is improper as the rejection of Claims 1-3, 6, 8, 10-12, 14, 16, 18, 33, 34 and 36-39 does not satisfy the

requirements of a *prima facie* case of obviousness as claim embodiments are not met by Agnoli in view of Wu as a whole. Appellants respectfully submit that Agnoli in view of Wu does not teach or suggest the embodiments recited in independent Claims 1, 11, 33 and 37.

First, Appellants respectfully submit that Agnoli teaches away from "providing information for transferring said session to said provider" as claimed. Appellants respectfully note that "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention" (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)).

The instant Office Action states that "Agnoli fails to teach transferring a session" (instant Office Action; page 2, line 7).

Appellants understand Agnoli to disclose a "system, method and computer program product for publishing transcoded media content in response to publishing service requests from end users" (Abstract). Appellants understand Agnoli to disclose a system in which a publishing service request processor receives a publishing service request from a client and the forwards the media content to the client. In particular, Appellants respectfully submit that the publishing service request processor maintains a connection with the requesting client, and that a session with the client is not transferred to a provider. In contrast, Appellants understand that a transcoding server is selected for transcoding, but that all communication to the client is performed via the publishing service request processor.

With reference to Figure 2 of Agnoli, "[t]he publishing service farm 210 acts as an intermediate between the origin servers and the user client 215" (emphasis added; [0113]). In particular, Agnoli recites that "[p]ublishing service farm 210 processes a publishing service request by arranging and executing the delivery of the desired media content" (emphasis added; [0012]).

With reference to FIG. 3 and FIG. 4A of Agnoli, a system for processing on-demand media provider requests is shown. As recited in Agnoli, "[a] client 402 sends a publishing service request to publishing service request processor 310" ([0085]) and "[d]istribution server 360 passes the transcoded media content to publishing service request processor 310, which forwards the transcoded media content to client 402, or to whatever client was specified in the publishing service request" (emphasis added; [0086]).

Appellants note that media provider request processor 340 is operable to select a transcoding server 350 ([0028] and [0029]). However, Appellants respectfully submit that selecting a transcoding server does not teach, describe or suggest "providing information for transferring said session to said provider" as claimed. As presented above, communication with the client is maintained by the publishing service request processor 310, and is not transferred. In contrast, by specifically disclosing that the publishing server farm is for "executing the delivery of the desired media content" ([0012]) and "forwards the transcoded media content" ([0086]), Appellants respectfully submit that Agnoli teaches away from the claimed embodiments.

Second, Appellants respectfully submit that there is no motivation to combine the teachings of Agnoli and Wu, because Agnoli teaches away from the suggested modification.

Appellants respectfully submit that "[i]t is improper to combine references where the references teach away from their combination" (emphasis added; MPEP 2145(X)(D)(2); *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)).

As presented above, the instant Office Action states that "Agnoli fails to teach transferring a session" (instant Office Action; page 2, line 7). Appellants understand Wu to be relied on for overcoming this shortcoming. Appellants understand Wu to disclose a method and system for transferring a communication session.

However, as presented above, Appellants respectfully submit that Agnoli specifically discloses that the publishing server farm is for "executing the delivery of the desired media content" ([0012]) and "forwards the transcoded media content" ([0086]). Therefore, Appellants respectfully submit that Agnoli teaches away from the suggested modification and combination with Wu.

Appellants note that the Response to Arguments section of the instant Office Action asserts that "[t]o teach away, a reference must actually teach something that is contrary to the claimed invention" (instant Office Action; page 11, section 26a). Appellants respectfully submit that to "teach away" it is not required that the asserted art "actually teach something that is contrary to the claimed invention" as asserted in the instant Office Action. Appellants respectfully note that "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention" (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)). In particular, Appellants

respectfully submit that the "teach away" from a modification, the asserted art must "lead away from the claimed invention" (emphasis added; MPEP 2141.02(VI)).

As presented above, Appellants understand Agnoli to teach that the publishing service farm 210 acts as the distribution point for all communication between the origin servers and the user client 215. With reference to Figure 2 of Agnoli, "[t]he publishing service farm 210 acts as an intermediate between the origin servers and the user client 215" (emphasis added; [0113]). In particular, Agnoli recites that "[p]ublishing service farm 210 processes a publishing service request by arranging and executing the delivery of the desired media content" (emphasis added; [0012]).

Accordingly, Appellants respectfully submit that Agnoli is not "simply silent as to the transferring of sessions" as asserted in the instant Office Action (page 12, line 1). In contrast, by disclosing that "[t]he publishing service farm 210 acts as an intermediate between the origin servers and the user client 215" (emphasis added; [0113]), Appellants respectfully submit that Agnoli leads away from "transferring said session to said provider" as claimed. Therefore, Appellants maintain that Agnoli teaches away from "transferring said session to said provider" as claimed.

In summary, Appellants respectfully submit that the rejections of the Claims are improper as the rejection of Claims 1-3, 6, 8, 10-12, 14, 16, 18, 33, 34 and 36-39 does not satisfy the requirements of a *prima facie* case of obviousness. Appellants respectfully submit that the combination of Agnoli and Wu does not show or suggest the embodiments of independent Claims 1, 11, 33 and 37, and that these claims are in condition for allowance. Claims 2, 3, 6, 8 and 10 that depend from independent Claim 1, Claims 12, 14, 16 and 18 that

depend from independent Claim 11, Claims 34 and 36 that depend from independent Claim 33 and Claims 38 and 39 that depend from independent Claim 37 also recite these embodiments. As such, Appellants also respectfully submit that the combination of Agnoli and Wu does not show or suggest the embodiments as recited in Claims 2, 3, 6, 8, 10, 12, 14, 16, 18, 34, 36, 38 and 39, and that these claims are also in condition for allowance as being dependent on an allowable base claim. Therefore, the Appellants respectfully assert that the basis for rejecting Claims 1-3, 6, 8, 10-12, 14, 16, 18, 33, 34 and 36-39 under 35 U.S.C. § 103(a) is traversed.

2. Whether Claims 4, 5, 15 and 35 are unpatentable under 35 U.S.C. §103(a) over Agnoli in view of Wu, further in view of Tso.

According to the instant Office Action, Claims 4, 5, 15 and 35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view of Wu, further in view of Tso. Appellants have reviewed Agnoli, Wu and Tso and respectfully submit that the embodiments as recited in Claims 4, 5, 15 and 35 are patentable over Agnoli, Wu and Tso, alone or in combination, for at least the following rationale.

Claims 4 and 5 are dependent on independent Claim 1, Claim 15 is dependent on independent Claim 11, and Claim 35 is dependent on independent Claim 33. Hence, by demonstrating that the combination of Agnoli, Wu and Tso does not show or suggest the embodiments of Claims 1, 11 and 33, it is also demonstrated that the combination of Agnoli, Wu and Tso does not show or suggest the embodiments of Claims 4, 5, 15 and 35.

Appellants respectfully submit that the claimed embodiments as a whole are not obvious over Agnoli in view of Wu, further in view of Tso. First, as presented above, Appellants respectfully submit that the combination of Agnoli and Wu does not satisfy a

prima facie case of obviousness under 35 U.S.C. § 103(a). In contrast, Appellants understand Agnoli to teach away from the claimed embodiments and to teach away from the suggested modification and combination with Wu.

Second, Appellants respectfully submit that Tso does not remedy the deficiencies in Agnoli because does not overcome the shortcomings of the combination of Agnoli and Wu. In particular, Appellants respectfully submit that Tso does not provide a suggestion or motivation for combining Agnoli and Wu as suggested.

Therefore, Appellants respectfully submit that Agnoli, Wu and Tso, alone or in combination, do not show or suggest the embodiments of independent Claims 1, 11 and 33, and that these claims are in condition for allowance. As such, Appellants also respectfully submit that Agnoli, Wu and Tso, alone or in combination, do not show or suggest the embodiments as recited in Claims 4 and 5 dependent on independent Claim 1, Claim 15 dependent on independent Claim 11, and Claim 35 dependent on independent Claim 33, and that these claims are also in condition for allowance as being dependent on an allowable base claim. Therefore, the Appellants respectfully assert that the basis for rejecting Claims 4, 5, 15 and 35 under 35 U.S.C. § 103(a) is traversed.

3. Whether Claims 7, 17 and 40 are unpatentable under 35 U.S.C. §103(a) over Agnoli in view of Wu, further in view of Richter.

According to the instant Office Action, Claims 7, 17 and 40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view of Wu, further in view of U.S. Patent Application Publication No. 2003/0046396 by Richter et al., hereinafter referred to as "Richter." Appellants have reviewed Agnoli, Wu and Richter and respectfully submit that

the embodiments as recited in Claims 7, 17 and 40 are patentable over Agnoli, Wu and Richter, alone or in combination, for at least the following rationale.

Claim 7 is dependent on independent Claim 1, Claim 17 is dependent on independent Claim 11, and Claim 40 is dependent on independent Claim 37. Hence, by demonstrating that the combination of Agnoli and Richter does not show or suggest the embodiments of Claims 1, 11 and 37, it is also demonstrated that the combination of Agnoli and Richter does not show or suggest the embodiments of Claims 7, 17 and 40.

Appellants respectfully submit that the claimed embodiments as a whole are not obvious over Agnoli in view of Wu, further in view of Richter. First, as presented above, Appellants respectfully submit that the combination of Agnoli and Wu does not satisfy a *prima facie* case of obviousness under 35 U.S.C. § 103(a). In contrast, Appellants understand Agnoli to teach away from the claimed embodiments and to teach away from the suggested modification and combination with Wu.

Second, Appellants respectfully submit that Richter does not remedy the deficiencies in Agnoli because does not overcome the shortcomings of the combination of Agnoli and Wu. In particular, Appellants respectfully submit that Richter does not provide a suggestion or motivation for combining Agnoli and Wu as suggested.

Therefore, Appellants respectfully submit that Agnoli, Wu and Richter, alone or in combination, do not show or suggest the embodiments of independent Claims 1, 11 and 37, and that these claims are in condition for allowance. As such, Appellants also respectfully submit that Agnoli, Wu and Richter, alone or in combination, do not show or suggest the

embodiments as recited in Claim 7 dependent on independent Claim 1, Claim 17 dependent on independent Claim 11, and Claim 40 dependent on independent Claim 37, and that these claims are also in condition for allowance as being dependent on an allowable base claim. Therefore, the Appellants respectfully assert that the basis for rejecting Claims 7, 17 and 40 under 35 U.S.C. § 103(a) is traversed.

4. Whether Claims 9 and 13 are unpatentable under 35 U.S.C. §103(a) over Agnoli in view of Wu, further in view of Lai.

According to the instant Office Action, Claims 9 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view of Wu, further in view of U.S. Patent No. 6,407,680 by Lai et al., hereinafter referred to as "Lai." Appellants have reviewed Agnoli, Wu and Lai and respectfully submit that the embodiments as recited in Claims 9 and 13 are patentable over Agnoli, Wu and Lai, alone or in combination, for at least the following rationale.

Claim 9 is dependent on independent Claim 1 and Claim 13 is dependent on independent Claim 11. Hence, by demonstrating that the combination of Agnoli, Wu and Lai does not show or suggest the embodiments of Claims 1 and 11, it is also demonstrated that the combination of Agnoli, Wu and Lai does not show or suggest the embodiments of Claims 9 and 13.

Appellants respectfully submit that the claimed embodiments as a whole are not obvious over Agnoli in view of Wu, further in view of Lai. First, as presented above, Appellants respectfully submit that the combination of Agnoli and Wu does not satisfy a *prima facie* case of obviousness under 35 U.S.C. § 103(a). In contrast, Appellants

understand Agnoli to teach away from the claimed embodiments and to teach away from the suggested modification and combination with Wu.

Second, Appellants respectfully submit that Lai does not remedy the deficiencies in Agnoli because does not overcome the shortcomings of the combination of Agnoli and Wu. In particular, Appellants respectfully submit that Lai does not provide a suggestion or motivation for combining Agnoli and Wu as suggested.

Therefore, Appellants respectfully submit that Agnoli, Wu and Lai, alone or in combination, do not show or suggest the embodiments of independent Claims 1 and 11, and that these claims are in condition for allowance. As such, Appellants also respectfully submit that Agnoli, Wu and Lai, alone or in combination, do not show or suggest the embodiments as recited in Claim 9 dependent on independent Claim 1 and Claim 13 dependent on independent Claim 11, and that these claims are also in condition for allowance as being dependent on an allowable base claim. Therefore, the Appellants respectfully assert that the basis for rejecting Claims 9 and 13 under 35 U.S.C. § 103(a) is traversed.

5. Whether Claims 26-30 and 32 are unpatentable under 35 U.S.C. §103(a) over Agnoli in view of Wu, further in view of Tso.

According to the instant Office Action, Claims 26-30 and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view of Wu, further in view of Tso. Appellants have reviewed Agnoli, Wu and Tso and respectfully submit that the embodiments as recited in Claims 26-30 and 32 are patentable over Agnoli, Wu and Tso, alone or in combination, for at least the following rationale.

Appellants note that independent Claim 26 recites (emphasis added):

> A system for streaming content to a client device, said system comprising:
>
> a service manager for receiving a request for an item of content from a portal, wherein said portal received said request from said client device, wherein said service manager is also for selecting a provider from a plurality of providers, each provider capable of performing a service on said item of content, wherein said service manager maintains a record comprising resources associated with said providers and wherein said service manager uses an estimate of resources associated with performing said service to select said provider according to information in said record, wherein data for said item of content are streamed from a source to said provider and wherein service result data are streamed from said provider to said client device.

Claims 27-30 and 32 that depend from independent Claim 26 also include these recitations.

Appellants respectfully submit that the claimed embodiments as a whole are not obvious over Agnoli in view of Wu, further in view of Tso. First, as presented above, Appellants respectfully submit that the combination of Agnoli and Wu does not satisfy a *prima facie* case of obviousness under 35 U.S.C. § 103(a). In contrast, Appellants understand Agnoli to teach away from the claimed embodiments and to teach away from the suggested modification and combination with Wu.

Second, Appellants respectfully submit that Tso does not remedy the deficiencies in Agnoli because does not overcome the shortcomings of the combination of Agnoli and Wu. In particular, Appellants respectfully submit that Tso does not provide a suggestion or motivation for combining Agnoli and Wu as suggested.

Therefore, Appellants respectfully submit that Agnoli, Wu and Tso, alone or in combination, do not show or suggest the embodiment of independent Claim 26, and that this claim is in condition for allowance. As such, Appellants also respectfully submit that Agnoli,

Wu and Tso, alone or in combination, do not show or suggest the embodiments as recited in Claims 27-30 and 32 dependent on independent Claim 26, and that these claims are also in condition for allowance as being dependent on an allowable base claim. Therefore, the Appellants respectfully assert that the basis for rejecting Claims 26-30 and 32 under 35 U.S.C. § 103(a) is traversed.

6. Whether Claim 31 is are unpatentable under 35 U.S.C. §103(a) over Agnoli in view of Wu, further in view of Tso, yet further in view of Richter.

According to the instant Office Action, Claim 31 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Agnoli in view of Wu, further in view of Tso, yet further in view of Richter. Appellants have reviewed Agnoli, Wu, Tso and Richter, and respectfully submit that the embodiments as recited in Claim 31 is patentable over Agnoli, Wu, Tso and Richter, alone or in combination, for at least the following rationale.

Claim 31 is dependent on independent Claim 26. Hence, by demonstrating that the combination of Agnoli, Wu, Tso and Richter does not show or suggest the embodiment of Claim 26, it is also demonstrated that the combination of Agnoli, Wu, Tso and Richter does not show or suggest the embodiment of Claim 31.

Appellants respectfully submit that the claimed embodiments as a whole are not obvious over Agnoli in view of Wu, further in view of Tso, yet further in view of Richter. First, as presented above, Appellants respectfully submit that the combination of Agnoli and Wu does not satisfy a *prima facie* case of obviousness under 35 U.S.C. § 103(a). In contrast, Appellants understand Agnoli to teach away from the claimed embodiments and to teach away from the suggested modification and combination with Wu.

Second, Appellants respectfully submit that Tso and Richter, alone or in combination, do not remedy the deficiencies in Agnoli because does not overcome the shortcomings of the combination of Agnoli and Wu. In particular, Appellants respectfully submit that Tso and Richter, alone or in combination, do not provide a suggestion or motivation for combining Agnoli and Wu as suggested.

Therefore, Appellants respectfully submit that Agnoli, Wu, Tso and Richter, alone or in combination, do not show or suggest the embodiment of independent Claim 26, and that this claim is in condition for allowance. As such, Appellants also respectfully submit that Agnoli, Wu, Tso and Richter, alone or in combination, do not show or suggest the embodiment as recited in Claim 31 dependent on independent Claim 26, and that this claim is also in condition for allowance as being dependent on an allowable base claim. Therefore, the Appellants respectfully assert that the basis for rejecting Claim 31 under 35 U.S.C. § 103(a) is traversed.

Conclusion

Appellants believe that pending Claims 1-18 and 26-40 are patentable over the asserted art as the rejections under 35 U.S.C. §103(a) do not satisfy the requirements of a *prima facie* case of obviousness.

Accordingly, Appellants respectfully submit that the rejections of Claims 1-18 and 26-40 are improper and should be reversed.

The Appellants wish to encourage the Examiner or a member of the Board of Patent Appeals to telephone the Appellants' undersigned representative if it is felt that a telephone conference could expedite prosecution.

Respectfully submitted,
WAGNER BLECHER LLP

Dated: June 17, 2009

/John P. Wagner, Jr./
John P. Wagner, Jr.
Registration No. 35,398
123 Westridge Drive
Watsonville, CA 95076
(408) 377-0500

VIII. Appendix - Clean Copy of Claims on Appeal

1. A method of servicing content for delivery to a client device, said method comprising:

identifying a type of service to be performed on an item of content, wherein said item of content is identified during a session involving said client device;

using an estimate of resources associated with performing said service to select a provider from a plurality of providers capable of performing said service; and

providing information for transferring said session to said provider, wherein said provider performs said service on said item of content upon being transferred said session.

2. The method of Claim 1 wherein said resources comprise estimated computational resources associated with performing said service.

3. The method of Claim 2 wherein said selecting comprises:

maintaining a record comprising resources available at each of said providers; and

selecting said provider according to said record.

4. The method of Claim 1 wherein said resources comprise estimated bandwidth associated with said session.

5. The method of Claim 4 wherein said selecting comprises:

maintaining a record comprising bandwidth available to each of said providers; and

selecting said provider according to said record.

6. The method of Claim 1 wherein said selecting comprises:

maintaining a record comprising providers to which sessions have been transferred; and

selecting said provider according to said record.

7. The method of Claim 1 further comprising:

estimating an amount of time said session is expected to remain with said provider.

8. The method of Claim 1 further comprising:

receiving an indication from said provider that said service is completed.

9. The method of Claim 1 wherein said transferring comprises:

sending information for locating said provider to said client device, wherein said client device and said provider transparently establish communication.

10. The method of Claim 1 further comprising:

identifying a source of said item of content, wherein data for said item of content are streamed from said source to said provider and wherein service result data are streamed from said provider to said client device.

11. A method of managing providers that service content for streaming to a client device, said method comprising:

identifying a type of service to be performed on an item of content, wherein said item of content is identified during a session involving said client device;

maintaining a record comprising resources associated with a plurality of providers capable of performing said service; and

selecting a provider from said plurality of providers based on information in said record, wherein said session is transferred to said provider, wherein data for said item of content are streamed from a source to said provider and wherein service result data are streamed from said provider to said client device.

12. The method of Claim 11 wherein said maintaining comprises:

estimating resources associated with performing said service; and

updating said record to reflect a change in resources associated with said provider based on said provider performing said service.

13. The method of Claim 11 further comprising:

providing information for transferring said session to said provider.

14. The method of Claim 11 wherein said resources comprise estimated computational resources associated with performing said service.

15. The method of Claim 11 wherein said resources comprise estimated bandwidth associated with said session.

16. The method of Claim 11 wherein said record comprises a list of providers to which sessions have been transferred.

17. The method of Claim 11 further comprising:

estimating a duration of said session.

18. The method of Claim 11 further comprising:

receiving a signal from said provider after said provider performs said service.

26. A system for streaming content to a client device, said system comprising:

a service manager for receiving a request for an item of content from a portal, wherein said portal received said request from said client device, wherein said service manager is also for selecting a provider from a plurality of providers, each provider capable of performing a service on said item of content, wherein said service manager maintains a record comprising resources associated with said providers and wherein said service manager uses an estimate of resources associated with performing said service to select said provider according to information in said record, wherein data for said item of content are streamed from a source to said provider and wherein service result data are streamed from said provider to said client device.

27. The system of Claim 26 wherein said service manager updates said record to reflect a change in resources associated with said provider based on said provider performing said service.

28. The system of Claim 26 wherein said resources comprise estimated computational resources associated with performing said service.

29. The system of Claim 26 wherein said resources comprise estimated bandwidth available to said provider.

30. The system of Claim 26 wherein said record comprises information showing which of said providers are performing a service.

31. The system of Claim 26 wherein said service manager estimates an amount of time for said provider to perform said service.

32. The system of Claim 26 wherein said service manager receives a signal from said provider after said provider performs said service.

33. A computer-usable medium having computer-readable program code embodied therein for causing a computer system to perform a method for servicing content for delivery to a client device, said method comprising:

identifying a type of service to be performed on an item of content, wherein said item of content is identified during a session involving said client device;

using an estimate of resources associated with performing said service to select a provider from a plurality of providers capable of performing said service; and

providing information for transferring said session to said provider, wherein said provider performs said service on said item of content upon being transferred said session.

34. The computer-usable medium of Claim 33 wherein said computer-readable program code embodied therein causes said computer system to perform said method further comprising:

maintaining a record comprising resources available at each of said providers; and

selecting said provider according to said record.

35. The computer-usable medium of Claim 33 wherein said computer-readable program code embodied therein causes said computer system to perform said method further comprising:

maintaining a record comprising bandwidth available to each of said providers; and

selecting said provider according to said record.

36. The computer-usable medium of Claim 33 wherein said computer-readable program code embodied therein causes said computer system to perform said method further comprising:

maintaining a record comprising providers to which sessions have been transferred; and

selecting said provider according to said record.

37. A computer-usable medium having computer-readable program code embodied therein for causing a computer system to perform a method for servicing content for streaming to a client device, said method comprising:

identifying a type of service to be performed on an item of content, wherein said item of content is identified during a session involving said client device;

maintaining a record comprising resources associated with a plurality of providers capable of performing said service; and

selecting a provider from said plurality of providers based on information in said record, wherein said session is transferred to said provider, wherein data for said item of content are streamed from a source to said provider and wherein service result data are streamed from said provider to said client device.

38. The computer-usable medium of Claim 37 wherein said computer-readable program code embodied therein causes said computer system to perform said method further comprising:

estimating resources associated with performing said service; and

updating said record to reflect a change in resources associated with said provider based on said provider performing said service.

39. The computer-usable medium of Claim 37 wherein said record comprises a list of providers to which sessions have been transferred.

40. The computer-usable medium of Claim 37 wherein said computer-readable program code embodied therein causes said computer system to perform said method further comprising:

estimating a duration of said session.

IX. Evidence Appendix

No evidence is herein appended.

X. Related Proceedings Appendix

No related proceedings.